

Flores, Priscilla (Feliciano)

From: Davidj Gray <gray.davidj@epamail.epa.gov>
Sent: Wednesday, September 24, 2014 1:57 PM
To: Gray, Davidj
Subject: Fw: Boxford - Salt Pile

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----- Forwarded by Davidj Gray/R1/USEPA/US on 09/24/2014 01:57 PM -----

From: Davidj Gray/R1/USEPA/US  
To: Karen Mcguire/R1/USEPA/US@EPA  
Date: 12/23/2008 02:00 PM  
Subject: Boxford - Salt Pile

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Hi Karen,

This 3/7/06 email and the appended email from 2/3/06 are the only substantive email I could find on the subject. I'll keep looking in my paper files.

djg

----- Forwarded by Davidj Gray/R1/USEPA/US on 12/23/2008 01:53 PM -----

**Ross Povenmire**  
<rpovenmire@town.boxford.ma.us>

03/07/2006 03:43 PM

To Davidj Gray/R1/USEPA/US@EPA

cc

Subject MassHighway NPDES permit

David,

I was recently alerted to the fact that the EPA is currently considering MassHighway's application for an NPDES permit renewal. Unfortunately the public comment period has closed. I wonder if there is any other way to submit concerns at this time. In particular, the Town of Boxford has experienced severe contamination of its groundwater by MassHighway road salt storage and road salting practices. The section of I-95 in Boxford was designated a low salt zone but by MassHighway's own admission, it was not accorded low-salt treatment for years, resulting in salt-laden runoff reaching permeable soils and groundwater. Efforts by MassHighway to provide replacement wells for affected homeowners has resulted in additional impact to wetlands due to lack of erosion control, poor supervision of contractors by MassHighway, and poor construction practices by the contractors. To date, MassHighway has not obtained permits from the Conservation Commission for any of the work, and has only recently reluctantly agreed to submit to the authority of the Commission under the Wetland Protection Act. MassHighway has been very reluctant even to inform the local permitting authorities of what activities MassHighway is engaged in within the Town. In my experience, there is also a

tendency within MassHighway for different departments to act independently, and for agreements made with the environmental department to be diluted or lost in the internal communication process with other departments. Specifically, an agreement by MassHighway Environmental Department to coordinate the installation of erosion control with the Conservation Office during a repaving project was not fulfilled. I had to dig through the chain of command to find the construction supervisor to achieve the desired results. In the past couple of weeks I have sent out no fewer than three enforcement orders related to MassHighway's salt remediation program. I therefore urge EPA to give MassHighway's application close scrutiny.

Ross

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Davidj Gray/R1/USEPA/US

02/03/2006 04:48 PM

To rpoventmire@town.boxford.ma.us

cc

Subject Stormwater Bylaw Applicability to State Agencies

Hi Ross,

Good to hear from you again. I understand your question as: 'whether or not Boxford's pending stormwater bylaw would apply to MassHighway, and its salt storage shed in particular.' I only have a moment now, but will follow-up with a complete answer next week once I have had a chance to refer to some key notes and seek assistance from counsel...

Just as Federal agencies often don't conform to state law, it is my general understanding from case law that Federal and state agencies need not recognize local ordinances and bylaws; with some exceptions for safety and reasonable accommodation. However, just as MHD needs to comply with the MA Wetlands Protection Act as administered at the local level, they would also need to comply with a bylaw that is adopted under authority granted by state law (i.e. M.G.L. c.83 s.10: Sewers, Drains, and Sidewalks - Rules and regulations regarding use and connections) or the Clean Water Act, and in fulfillment of its implementing regulations. An analogous program would be EPA's industrial pretreatment program (a.k.a. "local limits"), which is administered at the local level by the municipality/POTW.

An other point to consider is whether or not stormwater from the salt shed facility discharges into the town's MS4, or directly into Waters of the Commonwealth or U.S. If the latter, I don't think you could rely on authority granted under the Clean Water Act. The Phase II Rule, Regulations, and Small MS4 Permit only address discharges to your MS4, not direct discharges into state and U.S. Waters. You may want to check your "Authority" section.

Regards,

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